ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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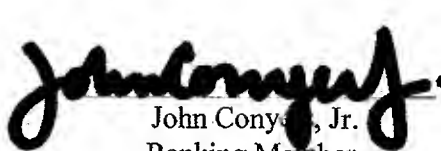
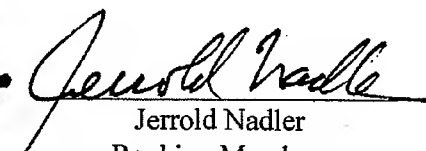
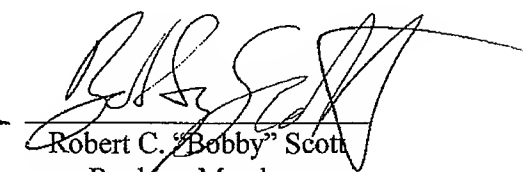
May 21, 2012

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dear Attorney General Holder:

We write to follow-up on our previous request for information regarding the Administration's legal and factual justifications for the targeted killing of Anwar al-Awlaki. We initiated our request in October 2011, following press reports of a secret memo authorizing the lethal targeting of this United States citizen, and followed up by letter to you dated January 18, 2012. We have not received any response to our requests.

In the meantime, you and John Brennan, Assistant to the President for Homeland Security and Counterterrorism, have outlined the Administration's legal and ethical justifications for the use of lethal force in public speeches. We welcome the public acknowledgment of the use of drone strikes to target terror suspects in various countries and the effort to outline the legal principles and process that the Administration uses to identify specific individuals for lethal targeting outside of a "hot" battlefield. As we noted in our January 18, 2012 letter, informing the public honors the President's commitment to greater accountability and transparency. Thank you for taking steps to enable a more informed and robust public debate regarding the use of lethal targeting as a counterterrorism measure.

However, these speeches do not obviate the need for the Department to respond to us directly and to provide the requested documents or briefing. They also do not fully acknowledge or explain the Administration's drone program. Both you and Mr. Brennan spoke to the process and justification for identifying and targeting specific individuals, with Mr. Brennan further emphasizing that – before a strike is carried out – there must be a "high degree of confidence" that "the individual being targeted is indeed the terrorist we are pursuing" and that innocent civilians will not be injured or killed. These statements do not mention or account for "signature" strikes, which apparently allow drone strikes even when the identity of those who could be killed is not known. The Washington Post reported that the President approved the increased use of signature strikes in Yemen five days before Mr. Brennan's speech, in which he

did not mention this increased use of signature strikes. See, e.g., Greg Miller, *White House approves broader Yemen drone campaign*, Washington Post, April 25, 2012; *Brennan speech is first Obama acknowledgment of use of armed drones*, Washington Post, April 30, 2012. It is not clear why and how the legal and ethical justifications and process for identifying and targeting specific individuals – who are shown to be members of al-Qa'ida or an associated force and an imminent threat to the United States – apply to signature strikes. How, for example, does the Administration ensure that the targets are legitimate terrorist targets and not insurgents who have no dispute with the United States?

We therefore ask that, in addition to the documents requested in our January 18, 2012 letter (i.e., memoranda or opinions regarding the targeting of Anwar al-Awlaki), the Department provide us with copies of all memoranda or opinions that provide a legal or factual justification for the Administration's drone program, including its use of "signature" strikes, or to otherwise brief us on this.

As we noted in our January letter, we understand that this involves classified information and implicates national security concerns. These are not valid reasons to refuse to provide the requested information. You and Mr. Brennan noted in your public speeches that certain Members of Congress – described by Mr. Brennan as "appropriate members of Congress and the committees who have oversight of our counterterrorism programs" – are engaged in an ongoing dialogue with the Administration regarding its use of drone strikes. The fact that the Administration may be sharing information with other Members or Committees does not excuse its failure to respond to our requests. Extrajudicial killing implicates serious constitutional and other legal considerations. You and Mr. Brennan acknowledge this in your public speeches, citing to our nation's founding document as a source of your alleged authority as well as a limitation on it. As the Ranking Members of the House Judiciary Committee and its Subcommittees on Constitution and Crime, we have the responsibility and right to a complete explanation of the Administration's program and the legal and factual justifications for it.

Given the importance of this issue, we look forward to a response at your earliest convenience.

Sincerely,

John Conyers, Jr.
Ranking Member

Jerrold Nadler
Ranking Member,
Subcommittee on the
Constitution

Robert C. "Bobby" Scott
Ranking Member,
Subcommittee on Crime,
Terrorism and Homeland
Security

cc: Chairman Lamar Smith, House Committee on the Judiciary